



# Flexible Business Trust

**WARNING:** This is a specimen document. Before you complete it and it is executed, we strongly recommend that you check the relevant Articles of Association, Limited Liability Partnership Agreement, Partnership Agreement before using this document and speak to your legal adviser on whether this document is appropriate for your needs and circumstances and on the consequences (including any tax consequences) of signing it. AIG Life Limited is unable to advise you in this regard and does not accept any liability for the effect or consequences (including any tax consequences) of using this document.

This document is provided as a specimen for consideration by those people who have an interest in a business and for their legal advisers to adapt. It is designed for use where all persons with an interest in the business are parties. It is designed for use with the AIG Life Limited Business Protection Policy only. It must not be used with any other AIG Policy cover.

## What is the Flexible Business Trust?

The Flexible Business Trust is a discretionary trust designed for use where a shareholder/member/partner in a Business intends to effect an AIG Business Protection Policy ('Policy') on their own life in trust to provide funds on their death or a diagnosed critical illness, terminal illness or total and permanent disability for the other shareholders/members/partners. The Policy cover does not permit any benefits payable under it to be retained and all benefits payable will therefore be gifted to the Trust on completion and execution of this document. For further information please read our 'Business Protection – Guide to Trusts'.

The Trustees have discretion to decide which of the Beneficiaries to benefit under the Trust, how much they receive and when. The Flexible Business Trust provides that all shareholders/members/partners in the Business at the time a claim is made under the Policy are automatically included as Beneficiaries (other than the Settlor). Therefore, any shareholders/members/partners who subsequently cease to be a shareholder/member/partner will be automatically excluded as Beneficiaries.

## Revert to Settlor provision

It is important to note that if the Settlor ceases to be a shareholder/member/partner in the Business prior to a claim arising under the Policy, this Trust will terminate and any benefits payable under this Policy will become payable to the Settlor. This may result in Inheritance Tax consequences for his/her estate. Alternative arrangements can, in certain circumstances, be put in place including the assignment of the Policy to a new trust for the benefit of his/her family.

### Once you and the Trustees that you choose have signed this document and the Policy commences:

- All benefits payable under the Policy will be held in trust for the Beneficiaries;
- The Trustees can only be changed in accordance with the terms of the Trust;
- The Beneficiaries will be the shareholders/members/partners (as the case may be) in the Business at the time of the claim unless they are excluded in accordance with the terms of the Trust (or you cease to have an interest in the Business in which case the Policy (and any benefits under it) will 'revert' to you); and
- The Trustees will manage and control the benefits that are held in the Trust.

**Please note:** You should seek legal and tax advice at the relevant time on what options may be available to you and the legal and tax implications of your position. In particular, this trust could be subject to an annual charge to income tax based on the Policy value.

## Trusts and taxation

HMRC has confirmed that where insurance policies are gifted into trust by parties who are shareholders/members/partners as part of reciprocal arrangements, which can be regarded as **commercial**, they will not be treated as gifts subject to a reservation of benefit for Inheritance Tax purposes. Similarly, premiums/payments paid in relation to a Policy written under the Flexible Business Trust are, provided the arrangements are regarded as commercial, not regarded as gifts for IHT purposes.

The laws relating to the taxation of gifts and trusts may change in the future. AIG Life Limited shall not be held responsible for any information given in this document or any other AIG documentation or for any changes in tax provisions or legislation that may affect the policies within the Trusts or the tax treatment of either the policies or the provisions of the Trust or the rules applying to gifts for IHT planning purposes.

## Commerciality of the trust arrangements

To ensure the arrangements are commercial, it is important that the only Beneficiaries under each Trust should be the other shareholders/members/partners, who have likewise effected Policies in corresponding trusts.

HMRC has confirmed that the inclusion of the Settlor as a Beneficiary (the Policy automatically reverts to the Settlor should the Settlor cease to be a shareholder/member/partner prior to a claim arising under the Policy) would not constitute a gift with reservation of benefit for IHT purposes, provided the arrangements are treated as commercial.

**Please read:** Before you complete this document and it is executed, we would recommend that you read our 'Business Protection - Guide to Trusts' and speak to a legal adviser. They will be able to help you decide whether the Flexible Business Trust is right for you and appropriate for your needs and circumstances.

**The original executed Trust Deed (or a certified copy of the original) should be sent to: AIG Life Limited, PO Box 12010, Harlow, CM20 9LG as notice of the assignment of the Policy effected by this Trust.**

# Checklist

Before returning this document to AIG Life Limited, please check that you have completed all relevant sections as follows (please tick to confirm):

		<input checked="" type="checkbox"/>
<b>Mandatory</b>	Entered the Policy number and details of the policyholders and Additional Trustee(s)	<input type="checkbox"/>
<b>Optional</b>	Entered details of Excluded Persons (if any)	<input type="checkbox"/>
<b>Mandatory</b>	Signed this document, with all signatures witnessed by an independent witness (who should be age 18 or over and not related to the Settlor or Trustees)	<input type="checkbox"/>
<b>Mandatory</b>	Dated this document (only <b>after</b> all sections have been completed and all parties have signed)	<input type="checkbox"/>

## Section A: Definitions

The words in this Deed which begin with a capital letter have particular meanings which are set out in the table below.

Word	Definition
<b>Additional Trustee</b>	The person or persons identified as such in Section C and who will act with the Settlor as a Trustee of the Trust.
<b>Beneficiary</b>	The person or persons listed in Section C to whom the Trustees can distribute the Trust Fund.
<b>Business</b>	The company, limited liability partnership or partnership (as the case may be) identified below or any successor company, limited liability partnership or partnership carrying on the business of the said company, limited liability partnership or partnership.
<b>Cover(s)</b>	The cover(s) under the Policy that may be written in trust.
<b>Excluded Person</b>	Any Shareholder, Member or Partner (as the case may be) listed in Section C or who has been notified to the Trustees in writing by the Settlor pursuant to clause 9 and to whom the Trustees cannot distribute the Trust Fund.
<b>Initial Trustees</b>	The Settlor and any Additional Trustee(s) who will become the new legal owners of the Policy and be responsible for administering the Trust.
<b>Member</b>	Any person who is recorded on the register of members as having a membership interest in a limited liability partnership, except the Settlor.
<b>Minor</b>	A person under the age of 18.
<b>Partner</b>	Any person owning capital in a partnership, except the Settlor.
<b>Policy</b>	The insurance Policy recorded in Section C.
<b>Settlor</b>	The person identified as such in Section C as the person establishing this Trust.
<b>Shareholder</b>	Any person owning shares in a company, except the Settlor.
<b>Trust</b>	The trust declared by this Deed.
<b>Trustees</b>	The Initial Trustees and/or the trustees for the time being of this trust (as the case may be).
<b>Trust Fund</b>	The Covers, all title, benefits, rights and interests which may be payable under the Covers, all monies received or may be payable under the Covers and all property and monies added thereto by way of further settlement, accumulation of income or otherwise.
<b>Trust Period</b>	The period ending the last day of the period of 125 years from the date of this Deed.

Unless the context otherwise requires:

- words denoting the singular shall include the plural and vice versa; and
- words denoting any gender shall include all other genders.

## Section B: The Trust Provisions

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### 1 Declaration of Trust

The Settlor as the legal and beneficial owner of the Policy hereby declares that he holds the Policy and all the benefits payable under it on trust together with the Additional Trustees as Initial Trustees subject to the powers and provisions of the Trust as set out in this Deed.

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### 2 Appointment of Additional Trustees

The Settlor hereby appoints the Additional Trustees to act with the Settlor as Trustees of the Trust in accordance with the terms of this Deed and the Additional Trustees agree to be appointed as signified by them signing this Deed.

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### 3 Discretionary power of appointment

- (a) The Trustees shall hold the income and capital of the Trust Fund upon trust for or for the benefit of such of the Beneficiaries in such shares, upon such trusts (which may include discretionary or protective powers or trusts) and in such manner generally as the Trustees shall in their absolute discretion appoint. Any such appointment may include such powers and provisions for the accumulation of income and such administrative powers and provisions as the Trustees think fit.
  - (b) No exercise of the power conferred by sub-clause 3(a) shall invalidate any prior payment or application of all or any part of the capital or income of the Trust Fund under the trusts of this Deed or made under any other power conferred by this Deed or by law.
  - (c) Any trusts and powers created by an appointment under sub-clause 3(a) may be delegated to any extent to any person, whether or not including the Trustees or any of them.
  - (d) The exercise of the power of appointment conferred by sub-clause 3(a) shall:
    - (i) be subject to the application, if any, of the rule against perpetuities; and
    - (ii) be by deed, revocable during the Trust Period or irrevocable, executed during the Trust Period.
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### 4 Default Trusts

- (a) In default of and subject to any exercise of the power conferred by clause 3(a), the Trustees shall pay or apply the income of the Trust Fund during the Trust Period to or for the benefit of such of the Beneficiaries (other than the Settlor) and in such shares if more than one and in such manner and upon such terms and conditions (if any) generally as the Trustees shall think fit.
  - (b) Despite the provisions of sub-clause 4(a) above the Trustees may during the Trust Period retain and accumulate the whole or any part or parts of the income of the Trust Fund as an accretion to capital and the Trustees may apply the whole or any part of such accumulated income as if it were income arising in the then current year.
  - (c) Subject as above and to the provisions of clause 4(d) below, the Trust Fund and its income shall at the end of the Trust Period be held upon Trust for such of the Beneficiaries (other than the Settlor) who shall be living at the date of claim under the Policy and, if more than one in proportion to their shareholding/equity or other interest in the Business absolutely.
  - (d) If the Settlor ceases to be a shareholder/member/partner in the Business (whichever is the case) prior to a claim arising under the Policy the Trustees shall hold the Trust Fund upon trust for the Settlor absolutely.
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### 5 Settlor and Excluded Person unable to benefit

No power or discretion conferred on the Trustees by this Trust or by law, either expressed or implied, may be exercised so as to cause or permit any part of the capital or income of the Trust Fund to become payable in any way to or for the benefit of the Settlor or any Excluded Person. For the avoidance of doubt, this clause shall not affect any payment made in the event of the Settlor ceasing to be a shareholder/member/partner in the Business (whichever is the case) prior to a claim arising under the Policy in accordance with clause 4(d).

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### 6 Irrevocability

The Trust shall be irrevocable.

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### 7 Number of Trustees and power to appoint new Trustees

- (a) There must be at least two Trustees at any given time of which one must be a person who is not the Settlor.
- (b) The power to appoint new Trustees shall be vested in the Settlor during his lifetime (such appointment must be by deed).

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## **8 Power to remove Trustees and retirement of Trustees**

- (a) The Settlor shall, during his lifetime, have the power to remove any Trustee without giving reasons for doing so and without the need for the other Trustees to agree, provided at least two Trustees remain following the removal.
- (b) The Trustees may remove a Trustee who cannot be found provided that:
  - (i) the Trustee who is being removed has not been in contact with any of the other Trustees within the period of 12 months preceding the removal;
  - (ii) the other Trustees have made reasonable efforts to make contact with the Trustee who is being removed; and
  - (iii) the removal is effected by deed executed by all of the continuing Trustees being at least two in number and a declaration is made in such deed that all reasonable efforts were made to contact the Trustee who cannot be found and that the continuing Trustees have written to the missing Trustee's last known address without success and that they have attempted to contact the missing Trustee through all other addresses given to them during their investigation. Such declaration shall be conclusive evidence in favour of any person dealing with the Trustees in good faith.
- (c) A Trustee may retire by giving notice in writing to the continuing Trustees provided that following the Trustee's retirement there are at least two continuing Trustees.

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## **9 Power to exclude Beneficiaries**

The Trustees may by deed add or remove any person or class of person or charity notified to them in writing by the Settlor during his/her lifetime to or from the class of Excluded Persons.

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## **10 Trustee delegation and powers of Settlor as lead trustee**

- (a) Notwithstanding the trusts declared in this Deed, all powers conferred by the Policy on the Settlor shall, during the lifetime of the Settlor, be exercisable by the Settlor.
- (b) Notwithstanding the provisions of clause 10(a) above or any rule of law to the contrary, any of the Trustees or the Trustees jointly may authorise any person (including any one or more of the Trustees who may or may not be the Settlor) to exercise all or any functions on such terms as to remuneration and other matters as they think fit. A Trustee (or other person in a fiduciary capacity) shall not be responsible for the default of that person (even if the delegation was not strictly necessary or expedient) provided they took reasonable care in their selection and supervision. None of the restrictions on delegation in Sections 12 to 15 (inclusive) Trustee Act 2000 shall apply.

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## **11 Power to invest**

The Trustees shall have all the powers of investment granted to them by section 3 of the Trustee Act 2000 save that they shall not exercise such powers to invest any part of the Trust Fund in any wasting asset.

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## **12 Power of management**

The Trustees shall have all the powers of an absolute owner in relation to the management and administration of the Trust Fund.

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## **13 Valid receipt**

- (a) The Trustees may pay or transfer any assets comprised in, or income of, the Trust Fund to which any minor is beneficially entitled, to that minor or to any parent or guardian of that minor and the receipt of the minor or of that parent or guardian shall be a full discharge to the Trustees.
- (b) The Trustees may pay or transfer any assets comprised in, or income of, the Trust Fund to the person who purports to be the treasurer or other appropriate officer of any charity which is entitled to such assets or income, and the receipt of such person shall be a full discharge to the Trustees.

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#### **14 Power to charge**

- (a) Any Trustee (except the Settlor), whether a solicitor or other person engaged in a profession or business, shall be entitled to charge and be paid all normal professional or other charges for business done, services rendered or time spent by such trustee personally, or by such trustee's firm or company, in the administration of this Trust.
- (b) Any Trustee which is a trust corporation or company authorised to undertake trust business shall be entitled to reimbursement of its proper expenses (including expenses incurred in connection with professional or other fees and charges for business done, services rendered or time spent by any firm or member of a firm associated or connected with such Trustee) and to remuneration for its services in accordance with its published terms and conditions for trust business in force from time to time, and, in the absence of any such published terms and conditions, in accordance with such terms and conditions as may from time to time be agreed between such trustee and the Settlor, or (if the Settlor is unfit, unable or unwilling to act) the person by whom the power of appointing new trustees is for the time being exercisable.
- (c) The Trustees shall have power to pay out of income or capital, as they may in their discretion determine, any expenses relating to the Trust Fund (or any assets comprised within it) or its administration.

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#### **15 Other Trustee powers**

The Trustees shall in addition to the powers referred to above and to the powers conferred on them by law have the following powers:

- (a) To borrow money for any purpose (including investment and the payment of tax or the making of any loan) upon any terms and the Trustees may charge property comprised in the Trust Fund for this purpose.
- (b) To lend all or any part or parts of the Trust Fund upon such terms as they may in their absolute discretion think fit, and on either a secured or an unsecured basis, to any Beneficiary or Beneficiaries provided that the Trustees comprise at least two individuals of which at least one is neither the Settlor nor the Beneficiary to whom a loan is proposed to be made and that any such loan is repayable within the Trust Period.
- (c) To effect any policy of insurance on the life of any person and in relation to any such policy the Trustees shall have all the powers of an absolute beneficial owner.
- (d) To retain all or any part of the Trust Fund in its actual condition and the Trustees shall be under no obligation in exercising their powers of investment to have regard to the need for diversification of investments.
- (e) To appropriate any part of the Trust Fund in or towards satisfaction of the interest of any Beneficiary and may for such purposes place such value on any property as they think fit.
- (f) To amend or add to the administrative provisions of this Trust provided such amendment or addition is by deed.

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#### **16 Liability for breach of trust**

The liability of a Trustee for breach of the Trust shall be limited to breaches arising from the Trustee's own fraud, wilful misconduct or gross negligence except in the case of a Trustee acting in a professional capacity. The Trustees shall not be liable for the default of a person acting under a delegated power pursuant to clause 10 of these Trust Provisions provided they took reasonable care in the selection and supervision of such person.

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#### **17 No duty to consult**

The Trustees may exercise their powers with absolute discretion and are under no duty to consult the Potential Beneficiaries or accept instructions from any Potential Beneficiaries.

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#### **18 Governing law and jurisdiction**

The governing law of this Trust shall be the law of England and Wales, without prejudice to the generality of the foregoing, that law shall govern the validity, construction, effects and administration of this Trust. The courts of England and Wales shall have exclusive jurisdiction in relation to the validity, construction, effects and administration of this Trust including, for the avoidance of doubt, in relation to the resolution of disputes regarding this Trust.

## Section C: The Declaration of Trust

Please use CAPITALS and black or blue ink throughout. If you make a mistake, please correct the error by crossing out (do not use correction fluid). The parties to this Deed should then initial the change.

**This declaration of trust is made on the**

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**PLEASE NOTE: DO NOT DATE UNTIL ALL PARTIES HAVE SIGNED THIS DOCUMENT AND NOT BEFORE THE POLICY HAS BEEN ISSUED.**

**in respect of Policy:**

Cover reference	<b>P</b>										-		
Cover type													
Name of Business	Full name of company/LLP/partnership (and registration number if applicable)												
	Registered address												
												Postcode	

**between:**

Policyholder/ Settlor	Full name of policyholder												
	Full address of policyholder												
												Postcode	

**and:**

Additional Trustee	Full name of Additional Trustee												
	Full address of Additional Trustee												
												Postcode	

**Since there must be at least two trustees at any time, one of which is not the Settlor it is recommended (but not mandatory) that more than one additional trustee is appointed.**

Additional Trustee	Full name of Additional Trustee												
	Full address of Additional Trustee												
												Postcode	

Additional Trustee	Full name of Additional Trustee	
	Full address of Additional Trustee	
		Postcode

Additional Trustee	Full name of Additional Trustee	
	Full address of Additional Trustee	
		Postcode

Additional Trustee	Full name of Additional Trustee	
	Full address of Additional Trustee	
		Postcode

## Beneficiaries

The persons the Trustees can choose to benefit under the Trust are set out below:

- C1** Subject to (C2) below, the Shareholders, Members or Partners (as the case may be) in the Business other than the Settlor or any Excluded Person at the date a claim is made under the Policy.
- C2** The Settlor – if they have ceased to be a shareholder, member or partner (as the case may be) in the Business prior to a claim being made under the Policy.

## Excluded Persons

The persons (or class or persons) who **CANNOT** benefit under the Trust. This could include Shareholders/Members/Partners who are not party to a business protection agreement or effecting similar policies in trust, or those with only a small shareholding/equity interest in the Business.

Full name of Excluded Person or definition of class	
Address (if applicable)	
	Postcode

Full name of Excluded Person or definition of class	
Address (if applicable)	
	Postcode

Full name of Excluded Person or definition of class	
Address (if applicable)	
	Postcode

# Execution of Trust

**WARNING:** BEFORE SIGNING THIS DOCUMENT PLEASE ENSURE THAT YOU HAVE CAREFULLY READ ALL OF ITS PROVISIONS AND THAT YOU HAVE TAKEN INDEPENDENT LEGAL AND TAX ADVICE ON THE TERMS OF THIS TRUST, ITS SUITABILITY TO YOUR NEEDS AND CIRCUMSTANCES AND ITS CONSEQUENCES (INCLUDING TAX CONSEQUENCES) OF SIGNING.

**EXECUTED AS A DEED** by the Settlor and the Trustee(s) and delivered on the date the declaration of trust is made.

## Signed as a deed by:

<b>Settlor</b>	Signature of Settlor	Full Name
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### In the presence of:

<b>Independent witness</b>	Signature of witness	Full Name
Address		
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)

<b>Additional Trustee</b>	Signature of Trustee	Full Name
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### In the presence of:

<b>Independent witness</b>	Signature of witness	Full Name
Address		
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)

<b>Additional Trustee</b>	Signature of Trustee	Full Name
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### In the presence of:

<b>Independent witness</b>	Signature of witness	Full Name
Address		
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)

<b>Additional Trustee</b>	Signature of Trustee	Full Name
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### In the presence of:

<b>Independent witness</b>	Signature of witness	Full Name
Address		
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)

<b>Additional Trustee</b>	Signature of Trustee	Full Name
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**In the presence of:**

<b>Independent witness</b>	Signature of witness	Full Name
	Address	
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)

## Execution by Trustee Company (if applicable)

**Signed as a deed for and on behalf of:**

<b>Name of Trustee company</b>	
<b>Name of director acting on behalf of Trustee company</b>	
<b>Signature of director</b>	

**In the presence of:**

<b>Independent witness</b>	Signature of witness	Full Name
	Address	
		Postcode

(Please note that the witness(es) should be independent and not related to the Settlor or any of the Trustees.)





[www.aiglife.co.uk](http://www.aiglife.co.uk)

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